Court No. 2

In the High Court of Uttaranchal at Nainital.

A.O. No. 80 of 2003.

Smt. Heera Devi W/o Shri Madho Singh,
R/o Village Raikote Kunwar,
Tehsil & District Champawat.

.....claimant/Appellant.

Versus

1. National Insurance Company Ltd.,
   through its Divisional Manager,
2. Sri Bhagwan Singh S/o Sri Gopal Singh,
   R/o Village Kharkote, Tehsil & Disltrict Pithoragarh
   Owner of Bus No. U.P. 03/1330,
3. Motor Accident Claims Tribunal/Disltrict Judge,
   Pitghoragarh.

..... Respondents

4. Km.Rekha,
5. Km.Malti
   Both daughters of Madho Singh,
6. Km. Dhana D/o Madho Singh
   minor-through her natural guardian
   and father Sri Madho Singh,
   All R/o Village Raikote Kunwar,
   Tehsil & District Champawat.

..... Proforma respondents

Sri Mohan Chandra Pande,learned counsel for the appellant.
Sri B.P.Nautiyal, learned counsel for the claimant/rspondents.

Dated: 23rd Aug.,2004

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma,J.

The claimant/appellant has filed this appeal against the judgment and award dated 17.2.2003 passed by the Moto Accident Claims Tribunal/District Judge, Pithoragarh in Motor Accident Claim Case No. 17 of 2001 Smt.Heera Devi and others versus Sri Bhagwan Singh and another, whereby the Tribunal has rejected the claim petition filed by the claimants for compensation.

2- Brief facts of the case giving rise to this appeal are that on 09.5.1996 at 8.30 p.m. in between Thal-Guacher motor road vehicle bus No. UP 03-1330 the met

with an accident due to rash and negligent driving by its driver in which Dinesh Singh sustained grievous injuries and he died. He was aged 21 years and he wass only son of his parents. The claimants filed the claim petition for compensation due to loss of dependency on account of death of Dinesh Singh.

3- The Opp. Party No.1 contested the case by filing their written statements. The Opp.Party No.1-owner of the vehicle stated that the offending vehicle was insured with the Insurance Company and the accident occurred due to vis major. The Insurance Company in its written statement alleged did not deny the accident and alleged that the offending vehicle was being plyed violating the terms and conditions of the insurance policy. The driver of the offending vehicle was not having a valid driving licence at the time of accident. It has further been pleaded by the Insurance Company in its written statement that the claimant filed the present claim petition on her behalf and on behalf of her minor daughters but she did not make party Smt.Meena Kunwar wife of Dinesh Singh due to which the claim petition is liable to be rejected. Further the claimant had filed a claim petition bearing Case No.56 of 1996 in the name of Smt.Meena Kunwar and other versus Bhagwan Singh and others on account of death Dinesh Kumar in the same accident and this claim petition has been dismissed ex parte on 09.11.2000. Restoration application to restore the case No. 56 of 1996 filed by the claimants has also been rejected on 23.12.2000. Again an application No.22 of 2001 to to restore the said case has also been rejected on 09.2.2001. Hence the principle of res judicata applies in the case and it is liable to be dismissed as not maintainable.

4- The Tribunal framed issues on the pleadings of the parties and after recording the evidence of the parties dismissed the petition holding that the petition is barred by principle of res judicata. Feeling aggrieved, the claimant Heera Devi has come up in this appeal.

5- The learned counsel for the appellant challenged the impugned order on the ground that the learned Tribunal has erred in ignoring the fact that Smt.Meena Kunwar who had married to the deceased just 10 days before the accident has re-married after the death of Sri Dinesh Singh and as such she was neither a necessary party nor any application on her behalf was maintainable as at the time of application she was no more a legal representative of the deceased. He further contended that the principle of res judicata is not applicable in the present case, firstly, because it is not a suit and, secondly, because the matter was not heard and decided finally by the learned Tribunal. The previous claim petition bearing No. 56 of 1996 was dismissed by the Tribunal in default of the parties and as such the principle of res judicata is not applicable in the present proceedings even on the ground of analogy and public policy.

6- We have gone through the entire material on record. We find force in both the contentions of the learned counsel for the appellant. The learned Tribunal, while deciding issue No.3, did not take into account the evidence that Smt.Meena Kunwar wife of the deceased-Dinesh Singh who was one of the claimants has re-married and at the time of present petition she was no more a legal representative of the deceased. Further, the claim petition was not decided on merit and it was dismissed in default of

the parties. The facts of case law *United India Insurance Co.Ltd. versus Smt.Sharada Adyanthaya & Ors.* [I (1998) ACC 296 (FB) Karnataka High Court] relied by the Tribunal in the impugned judgment are entirely different to the facts of this case. We are of the view that the finding given by the learned Tribunal on issue No.3 that the principle of res judicata are applicable in the case is wrong and is not in right perspective to Sec. 11 Civil Procedure Code and the facts and circumstances of the case.

7- Therefore, the appeal is allowed with the aforesaid observations. The case is remanded back to the learned Tribunal with the direction to reconsider the matter on issue Nos. 3 & 4 afresh after affording full opportunity to the parties to adduce evidence. The Tribunal shall decide the matter within a period of four months from the date of production of certified copy of this order by the appellant.

(B.S.Verma, J.) **(P.C.Verma, J.)**

P.Singh